

Board of Legal Document Preparers
Certification and Licensing Division
1501 W. Washington Street, Suite 104
Phoenix, Arizona 85007
(602) 452-3378

**IN THE SUPREME COURT
STATE OF ARIZONA**

PETITION TO AMEND RULE 31(d), ARIZONA) Supreme Court No. R-11-0001
RULES OF THE SUPREME COURT.)

) AMENDED COMMENT IN RESPONSE
) TO PETITION TO AMEND RULE 31(d),
) ARIZONA RULES OF THE SUPREME
) COURT

Pursuant to Arizona Code of Judicial Administration (“ACJA”) § 7-208(D)(4)(b), the Board of Legal Document Preparers submits this comment in response to Rule Petition R-11-0001 filed by Edward Novak, Scott Rodgers and Ronda Fisk requesting the Arizona Supreme Court add an exemption to the unauthorized practice of law provisions contained in Arizona Supreme Court Rule 31 which reads (as proposed):

A condominium unit owner’s association, as defined by A.R.S. § 33-1241, and a planned community association, as defined by A.R.S. § 33-1802, may be represented in small claims procedures, in communicating with condominium unit owners and homeowners regarding unpaid assessments and fees, and in the preparation, execution, and recordation of notices of liens created pursuant to A.R.S. § 33-1256 and § 33-1807, by a duly authorized corporate officer, board member, employee of the association, or employee of a management company with a contract to provide management services to the association who is not an active member of the state bar.

The body of the Petition references “...various administrative bodies have found that a community management company’s execution of a lien in an association’s behalf constitutes the unauthorized practice of law.” It is presumed this refers to recent disciplinary actions taken

1 by the Board of Legal Document Preparers. Action by other “administrative bodies” could not
2 be determined.

3 No provision of ACJA § 7-201 or ACJA § 7-208 authorizes a certified legal document
4 preparer to act in a representative capacity on behalf of a customer; including signing
5 documents for a customer, calling/writing to the Courts or opposing parties/counsel on behalf
6 of a customer, or appearing on behalf of or to assist a consumer at a legal proceeding. The
7 Board of Legal Document Preparers has recently entered findings that certified individuals and
8 business entities engaging in these activities have exceeded the authority of a certified legal
9 document preparer and thereby have engaged in the unauthorized practice of law and violated
10 numerous provisions of ACJA. The Board of Legal Document Preparers recently found a
11 certified legal document preparer (individual or business entity) cannot circumvent regulatory
12 requirements by entering a contract with a consumer that authorizes the certified legal
13 document preparer to exceed the stated authorities of a certified legal document preparer as
14 provided for in ACJA § 7-208.

15 The ACJA § 7-208(J) Code of Conduct prohibits a certified legal document preparer
16 from acting in a representative capacity – UNLESS authorized to do so by a Rule 31(d)
17 exception. ACJA § 7-208(J)(5)(b) reads:

18 *A legal document preparer shall not represent they are authorized to practice law in this*
19 *state, nor shall the legal document preparer provide legal advice or services to another by*
20 *expressing opinions, either verbal or written, or by representing another in a judicial,*
21 *quasi-judicial, or administrative proceeding, or other formal dispute resolution process,*
22 *except as authorized in Rule 31(d), Rules of the Supreme Court. A legal document preparer*
23 *shall not attend court with a consumer for the purpose of assisting the consumer in the*
24 *court proceeding, unless otherwise ordered by the court.*

25 If the proposed exemption is ultimately adopted by the Court and thereby added to Rule
31(d), the Code of Conduct provision may no longer be applicable to certified legal document
preparer property management companies or their certified employees. Further, it is
anticipated that if the proposed exemption is adopted, property management companies

1 offering document preparation and other legal services will no longer obtain or maintain their
2 legal document preparer certification and proceed outside the scope of any regulatory scheme.

3 The Board of Legal Document Preparers requests the Court consider the following:

4 a) If adopted, the proposed exemption will authorize certified legal document preparer
5 property management companies and their certified employees to communicate with
6 opposing parties/attorneys on behalf of a customer (i.e. the homeowners) about legal
7 actions or issues. No present provision of Rule 31, ACJA § 7-201 or ACJA § 7-208
8 authorizes a certified legal document preparer to act in a representative capacity or to
9 negotiate or otherwise attempt to achieve settlement of legal disputes. Legal document
10 preparers are authorized to provide general legal information but have no authority to offer
11 legal advice, express legal opinions, or make recommendations to a consumer about
12 possible legal rights, remedies, strategies, options or defenses. If certified legal document
13 preparers were to assume the representative duties offered in the proposed exemption, they
14 would routinely be expected by their customers to violate ACJA § 7-201 and ACJA § 7-
15 208.
16

17 b) The stated purpose of the Legal Document Preparer Program [See ACJA 7-208(C)] is to
18 protect the public through the establishment of core competencies, professional standards
19 and accountability methods for non-attorney legal professional. Presumably, the property
20 management companies would assert a future adoption the proposed exemption means the
21 property management companies and their certified legal document preparer employees
22 would no longer need to hold active legal document preparer certification. The Board of
23 Legal Document Preparers believes the lack of oversight and absence of regulation would
24 provide endless opportunities for non-attorney/non-LDPs (who may or may not possess
25

1 minimum core competencies) to offer and provide services without being required to
2 observe, adhere to, or be accountable for professional or ethical standards.

3 c) In the past, the premise of non-attorneys who are not actively and directly supervised by
4 actively admitted Arizona attorneys engaging in unregulated aspects of the practice of law
5 has not been consistent with the Court's mandate to protect the public. The Board of Legal
6 Document Preparers believes the proposed exemption is not consistent with the Court's
7 Strategic Agenda as it would essentially authorize this small group of individuals and
8 business entities to engage in several aspects of the practice of law that are otherwise
9 presently regulated. Such could be said about several of the existing exemptions contained
10 in Rule 31(d). Yet, unlike the exemptions currently in effect, the proposed exemption does
11 not involve limited administrative proceedings, clarification or codification of self-
12 representation rights, or other authorities established by statute.

13
14 d) The Board of Legal Document Preparers is concerned the proposed exemption appears to
15 offer preferential treatment to property management companies and Homeowners
16 Associations and fails to acknowledge other entities and business models that routinely
17 process liens and pursue judicial remedies in order to resolve disputes. The Board of Legal
18 Document Preparers believes the adoption of the proposed exemption will appear to single
19 out property management companies and Homeowners Associations for preferential
20 treatment and would ultimately open the door for other entities and businesses to request
21 similar exemptions to the unauthorized practice of law.

22
23 e) The Board of Legal Document Preparers recognizes the legal ramifications of liens are
24 significant and unique to each situation and believes it is contrary to the best interest and
25 protection of the public to allow for the preparation and filing of liens, in addition to the

1 other practice of law authorities incorporated into the proposed exemption, without the
2 oversight to mitigate potential and unnecessary harm to the public.

3 f) The Board of Legal Document Preparers notes the adoption of the proposed exemption
4 does not overcome the statutory language presently reflected in Arizona Revised Statutes
5 (“ARS”) § 22-512. ARS 22-512(A) provides:

6 *Any natural person, corporation, partnership, association, marital community or other*
7 *organization may commence or defend a small claims action, but no assignee or other*
8 *person not a real party to the original transaction giving rise to the action may*
9 *commence such an action except as a personal representative duly appointed pursuant*
to a proceeding as provided in title 14.

10 The Title 14 exception referenced in ARS § 22-512(A) is not applicable to the property
11 management companies or in any way otherwise applicable to the Homeowners Associations.
12 The proposed exemption does not appear to offer a property management company or its
13 employees standing under the law to represent an association in a judicial proceeding as the
14 property management companies and property management company employees are not real
15 parties of interest in the original transaction underlying the necessity for a lien. Nor do the
16 property management company employees qualify for standing to act in a representative
17 capacity on behalf of the Homeowners Associations under ARS § 22-512(B) which reads:

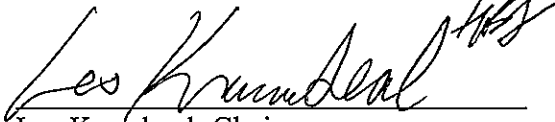
18 *Notwithstanding section 32-261, in a small claims action:*

- 19 *1. An individual shall represent himself.*
20 *2. Either spouse or both may represent a marital community.*
21 *3. An active general partner or an authorized full-time employee shall represent a*
partnership.
22 *4. A full-time officer or authorized employee shall represent a corporation.*
23 *5. An active member or an authorized full-time employee shall represent an*
association.
24 *6. Any other organization or entity shall be represented by one of its active members*
or authorized full-time employees.

25 *An attorney-at-law shall not appear or take any part in the filing or prosecution or defense*
of any matter designated as a small claim.

1 No other existing laws or court rules, including Rule 31, could be determined that
2 would provide a property management company or its employees alternative standing to
3 represent an association in any other jurisdiction of the court.

4 DATED this 9th day of May, 2011.

5 
6

7 Les Krambeal, Chair
8 Board of Legal Document Preparers

9 A copy of the foregoing hand delivered and/or mailed this 9th day of May, 2011, to:

10 Arizona Supreme Court
11 Clerk of the Court
12 1501 West Washington Street
13 Phoenix, Arizona 85007

14 Nina Preston, Assistant Counsel
15 Administrative Office of the Court
16 1501 West Washington Street, 4th Floor
17 Phoenix, Arizona 85007

18 Edward F. Novak
19 Polsinelli Shughart, PC
20 One East Washington Street, Suite 1200
21 Phoenix, Arizona 85004

22 Scott W. Rodgers
23 Rhonda R. Fisk
24 Osborn Maledon, PA
25 2929 N. Central Avenue, Suite 2100
Phoenix, Arizona 85012

By: 

Kandace French, Programs Specialist
Certification and Licensing Division